

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

Primo Water Corporation,

Plaintiff,

v.

Zephyr Fluid Solutions, LLC,

Defendant.

Civ. No. 1:10-cv-931

COMPLAINT

Plaintiff, Primo Water Corporation (“Primo Water”), by its attorneys, alleges as follows for its Complaint for Patent Infringement against Defendant Zephyr Fluid Solutions, LLC (“Zephyr”).

JURISDICTION AND VENUE

1. This action is for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has jurisdiction over the patent infringement cause of action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. Under 28 U.S.C. §§ 1391 and/or 1400, venue lies in this judicial district because Zephyr conducts continuous and systematic business in this district, advertises in this district, is subject to personal jurisdiction in this district, and has caused the injuries complained of herein in this district, and/or are present in this district.

PLAINTIFF AND THE PATENTS AT ISSUE

3. Plaintiff Primo Water is a Delaware corporation having its principal place of business at 104 Cambridge Plaza Drive, Winston-Salem, North Carolina 27104.

4. Primo Water produces the top-selling line of water dispensers in the United States and produces and sells products that help people live better lives, be healthier, and help protect the environment. Primo Water bottles its water locally, and sells the water in three-gallon and five-gallon plastic bottles. Primo Water provides return bins at various locations so consumers can return the empty plastic bottles to Primo Water. The plastic bottles are re-used multiple times, and then they are recycled such that thousands of single-use plastic bottles are kept from landfills and millions of gallons of oil are saved.

5. Primo Water is the assignee of United States Patent No. Des. 542,495 (the “‘495 Patent”), entitled Bottle Return Apparatus, which issued on May 8, 2007. A copy of the ‘495 Patent is attached to this Complaint as Exhibit A.

6. Primo Water is also the assignee of United States Patent No. Des. 565,268 (the “‘268 Patent”), entitled Bottle Return Apparatus, which issued on March 25, 2008. A copy of the ‘268 Patent is attached to this Complaint as Exhibit B.

DEFENDANT

7. Zephyr is a limited liability corporation having its principal place of business at 14 Finance Drive, Danbury, Connecticut 06810. The nature of Zephyr’s business is custom retail and distribution products for the beverage industry. Upon information and belief, Zephyr does substantial business in this judicial district.

8. Upon information and belief, Zephyr manufactures, uses, offers for sale, sells, and/or imports a Bottle Return Cage for plastic bottles for water dispensers. Attached as Exhibit C to this Complaint is Zephyr’s Custom Retail & Distribution Products for the Beverage Industry product brochure which contains on page 2 a picture of Zephyr’s Bottle Return Cage for plastic bottles for water dispensers.

9. Zephyr operates the website www.zephyrfluidsolutions.com through which it advertises and offers for sale its custom retail and distribution products, including the Bottle Return Case.

10. Zephyr sells its Bottle Return Case to national bottle retailers who place the Bottle Return Cages in retail store locations such as in the stores of national retailer Home Depot.

11. Zephyr also advertises and promotes its products at trade shows which retailers from throughout the United States attend.

COUNT I

INFRINGEMENT OF THE '495 PATENT

12. Primo Water incorporates all preceding Paragraphs of its Complaint as if fully set forth herein.

13. This action arises under the patent laws of the United States, Title 35 of the United States Code.

14. Zephyr makes, uses, offers to sell, sells and/or imports return bins for plastic bottles for water dispensers, instructs others in their manufacture or use, and is liable for infringement of the '495 Patent under 35 U.S.C. § 271(a), (b), and/or (c).

15. Zephyr will continue to commit such acts of infringement unless enjoined by this Court.

16. Zephyr has continued to commit one or more of the acts described in the preceding paragraphs with full knowledge of the '495 Patent.

17. Zephyr has willfully infringed the '495 Patent.

18. Primo Water has been injured and suffered damages as a result of Zephyr's infringement.

19. Primo Water will continue to be irreparably harmed if Zephyr's infringement is not enjoined.

COUNT II

INFRINGEMENT OF THE '268 PATENT

20. Primo Water incorporates all preceding Paragraphs of its Complaint as if fully set forth herein.

21. This action arises under the patent laws of the United States, Title 35 of the United States Code.

22. Zephyr makes, uses, offers to sell, sells and/or imports return bins for plastic bottles for water dispensers, instructs others in their manufacture or use, and is liable for infringement of the '268 Patent under 35 U.S.C. § 271(a), (b), and/or (c).

23. Zephyr will continue to commit such acts of infringement unless enjoined by this Court.

24. Primo Water has been injured and suffered damages as a result of Zephyr's infringement.

25. Primo Water will continue to be irreparably harmed if Zephyr's infringement is not enjoined.

PRAYER FOR RELIEF

WHEREFORE, Primo Water prays for judgment as follows:

A. That this Court adjudge and decree that Zephyr has infringed the '495 Patent under 35 U.S.C. § 271(a), (b), and/or (c), and that such infringement was willful and that this case is exceptional under 35 U.S.C. § 285;

B. That this Court adjudge and decree that Zephyr has infringed the '268 Patent under 35 U.S.C. § 271(a), (b), and/or (c), and that this case is exceptional under 35 U.S.C. § 285;

C. That this Court preliminarily and permanently enjoin Zephyr, its officers, agents, servants, employees, attorneys, successors, and assigns, and all others in active concert or participation with them, from continued infringement of the '495 Patent;

D. That this Court preliminarily and permanently enjoin Zephyr, its officers, agents, servants, employees, attorneys, successors, and assigns, and all others in active concert or participation with them, from continued infringement of the '268 Patent;

E. That Primo Water be awarded damages against Zephyr for infringement of the '495 Patent, and that such an award be trebled under 35 U.S.C. § 284;

F. That Primo Water be awarded damages against Zephyr for infringement of the '268 Patent under 35 U.S.C. § 284;

G. That Primo Water be awarded Zephyr's profits under 35 U.S.C. § 289 for infringement of the '495 Patent;

H. That Primo Water be awarded Zephyr's profits under 35 U.S.C. § 289 for infringement of the '268 Patent;

I. An award for Primo Water's costs and attorneys' fees; and

J. Any other relief this Court deems just and proper.

Dated: December 3, 2010

Respectfully submitted,

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